

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

MONDAY, THE 15TH OCTOBER 2007 / 23RD ASWINA 1929

WP(C).No. 28314 of 2007(U)

OS.298/1999 of ADDL.SUB COURT,PARAVUR

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PETITIONER:

MARYKUTTY,W/O. ALIYAR,KONNANKUDY,
KARATTUPALLIKKARA,PERUMBAVOOR.

BY ADV. SRI.RAJESH VIJAYAN

RESPONDENT:

MADHAVAN NAIR, S/O. PARAMESWARAN NAIR,
MUTHIRATHALAYIL, PAYIPRA KARA,
MULAVOOR VILLAGE.

BY ADV. SRI.A.BALAGOPALAN
SMT.KALA G.NAMBIAR
SMT.LAKSHMI.T.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 15/10/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

Appendix

Petitioner's Exts:

Ext.P1 true copy of the plaint in OS 298/1999 on the file of the Additional Sub Court, North Paravur.

Ext.P2 true copy of the written statement filed by this petitioner and her husband.

Ext.P3 true copy of the ex parte decree.

Ext.P4 true copy of the petition in IA 3335/05

Ext.P5 true copy of the Medical Certificate issued by Ernakulam Medical Centre to the petitioner.

Ext.P6 true copy of the sale notice.

Ext.P7 true copy of the order in IA No.3335/2005 of the Additional Sub Court, North Paravur.

M.N.Krishnan, J.

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W.P(C).No.28314 of 2007

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Dated this the 15th day of October, 2007.

JUDGMENT

This Writ Petition is filed seeking to set aside the order passed in I.A.No.3335 of 2005 in I.A.No.368 of 2003 in O.S.No.298 of 1999. The suit is one for return of the advance amount and the court has passed an ex parte decree in favour of the plaintiff. To set aside the ex parte decree the defendants moved an application as I.A.No.368 of 2003. Due to non-prosecution, it was dismissed. To restore the said I.A.No.368 of 2003, I.A.No.3335 of 2005 was filed, which had also met with the same result. It is against that decision, the present Writ Petition is preferred.

2. Learned counsel for the writ petitioner submits that on the fateful day, there was no representation on behalf of the counsel as the counsel was engaged in the Motor Accidents Claims Tribunal, Perumbavoor. He also had drawn my attention

to the counter statement, which indicates that the court did not grant adjournment in spite of the request. There was some movement in the right direction at least for seeking adjournment. One cannot hold that the counsel and the client were grossly negligent or guilty of grave misconduct. In such a situation, principles of natural justice demands a chance for hearing.

3. Therefore, I set aside the order in I.A.No.3335 of 2005 and allow the same and direct the court below to restore I.A.No.368 of 2003 to file and dispose of the same in accordance with law. Writ petitioner is directed to co-operate with the court and not to ask for unnecessary adjournments and the court is directed to dispose of the application within a time frame of six weeks from the date of appearance. Parties are directed to appear before the court below on 3.11.2007.

Writ Petition is disposed of as accordingly.

M.N.Krishnan,
Judge.